

EXHIBIT BN

[PUBLIC VERSION]

1 Rough Draft Deposition of Peter Conti-Brown

2 BY MR. MICHAELSON

3 Q Could you please state your name for
4 the record?

5 A Peter Conti-Brown.

6 Q Okay. And you understand that you're
7 under oath today?

8 A I do.

9 Q And you understand that you're giving
10 expert testimony in connection with the case
11 brought by Custodia against the Board of
12 Governors and the Federal Reserve Bank of Kansas
13 City?

14 A I do.

15 Q Okay. And in your -- and you've
16 submitted a report in this case as well as a
17 supplemental report, correct?

18 A That's right.

19 Q And in the reports when you refer to
20 the Fed or the Federal Reserve, you're referring
21 to the Federal Reserve System, including both the
22 Board of Governors and reserve banks, correct?

9 typically express its -- its policies to the
10 public?

11 A With speeches by its principals,
12 congressional testimony by its principals,
13 official documents by its -- by its staff and
14 principals.

15 Q Any other ways?

16 A There may be but not that I can think
17 of now.

18 Q Okay.

19 A Oh, in the -- I suppose in the meetings
20 and transcripts of its meetings that are
21 published sometimes on a lag.

22 Q Okay. Now, to be clear, it's your

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1 opinion that -- that the Federal Reserve did
2 claim discretion over access to services prior to
3 1980, correct?

4 A Yes. That is my opinion.

5 Q And it's also your opinion that the
6 Federal Reserve has claimed discretion over
7 access to services after 2015, correct?

8 A That's correct.

9 Q So you're focused on just this period

10 from 1980 to 2015 when it is your opinion the
11 Federal Reserve did not claim access over -- it
12 claimed discretion over access to services?

13 A Could you --

14 MR. SCARBOROUGH: Objection to form.

15 THE WITNESS: Could you repeat that
16 question?

17 BY MR. MICHAELSON

18 Q Sure. So it's your opinion that the
19 Federal Reserve did not claim discretion over
20 access to services from 1980 to 2015?

21 A That's right.

22 Q But that it did claim access to

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1 services prior to 1980?

2 MR. SCARBOROUGH: You misspoke.

3 BY MR. MICHAELSON

4 Q But it did claim discretion over access
5 to services prior to 1980?

6 A That's right.

7 Q And it did claim discretion over access
8 to services after 2015?

9 A That's right.

10 Q But between 1980 and 2015, the Federal

1 access request should consider whether the
2 institution precepts or creates risk to the
3 reserve bank.

4 Do you see that?

5 A Which -- which subpoint? Sorry.

6 Q Principle No. 2 on page 36.

7 A I see that. And is there a subpart
8 that you're reading or just --

9 Q No, just principle No. 2.

10 A Yeah.

11 Q And it's your opinion that what
12 Congress intended with the Monetary Control Act
13 is that this consideration be handled by the
14 state banking authority?

15 A No. To be handled by the Federal
16 Reserve for member banks and for bank holding
17 companies and financial holding companies. For
18 the FDIC for state, nonmember banks that were
19 member of the deposit insurance system and for
20 the comptroller of the currency and for bank
21 authorities for those few banks that were not
22 members of the Federal Reserve system and did not

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1 participate in the deposit insurance system and

2 did not have a national charter.

3 Q So this principle No. 2 here would be
4 inconsistent with congressional intent as applied
5 to an unsured state-chartered depository
6 institution that's not a member bank?

7 A No, to be clear, the -- none of the
8 participants in the debates around the MCA that
9 I've been able to discern contemplated that
10 specific question. The intent that I am
11 evaluating is the intent whether the Federal
12 Reserve would reclaim authority to impose
13 membership-like admission to its services to Fed
14 nonmember banks. The intent of the MCA framers
15 was to remove that authority and that discretion
16 over fed nonmember banks.

17 Q Is this principle No. 2 here,
18 consideration of the reserve bank, is it your
19 opinion that consideration by the Federal Reserve
20 of risk to a reserve bank is inconsistent with
21 the Federal Reserve's history and practice prior
22 to passage of the Monetary Control Act?

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1 A Not with respect to admission to Fed
2 membership, which both preceded and -- and

17 risk to the system, right?

18 A Right.

19 Q And it's your opinion that all these
20 banks pursuant to the MCA intent behind the MCA,
21 must get access to an account, right?

22 A All legally-eligible depository

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1 institutions, the intent of the framers of the
2 MCA was to give them access on equal terms to
3 Federal Reserve services yes.

4 Q And that once they have an account,
5 you're not precluding the possibility that the
6 Federal Reserve can conduct a risk assessment
7 concerning each institution, right?

8 A That's -- it's correct that I'm
9 asserting that the Federal Reserve's risk
10 assessments pursuant to regulation is consistent
11 with the Fed's practices after the passage of the
12 Monetary Control Act.

13 Q But to the extent that they restricted
14 use of any service in perpetuity, that would be
15 inconsistent with the intent behind the monetary
16 control? That's your opinion?

17 MR. SCARBOROUGH: Objection.

18 THE WITNESS: My opinion is that the
19 intent of the framers of the Monetary Control Act
20 was not to give the Federal Reserve the authority
21 to impose membership entrance standards for use
22 of Federal Reserve services as it had done prior

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1 to 1980 after the passage of that act.

2 MR. MICHAELSON: So the Narrow Bank is
3 a state-chartered non-member bank.

4 A That's right.

5 Q Like Custodia, right?

6 A Chartered by the state of Connecticut
7 where Custodia was chartered by --

8 Q Right. But both are state-chartered
9 non-member banks, right?

10 A That's right.

11 Q And so it's your opinion that the
12 Federal Reserve -- that the intermediary control
13 intent was to force the Federal Reserve to give
14 entities like that access to services
15 irrespective -- without the Federal Reserve being
16 powered to conduct a risk assessment?

17 A My opinion is that the intent of the
18 framers of the MCA was to require the Federal